

**NOTICE OF AMENDED STANDARDS TO BE EMPLOYED IN THE
REVIEW OF APPLICATIONS FOR AUTHORIZATION
OF EMPLOYMENT OF PROFESSIONALS**

In addition to the requirements of 11 U.S.C. Section 327 and Bankruptcy Rule 2014, and the standards set forth in the United States Trustee Guides, I shall apply the following standards in reviewing all applications for authorization of employment of professionals in bankruptcy cases over which I preside. Applications filed after June 1, 1990 must comply with these standards.

1. **Contents of Application.** The application must state:

- a. the necessity for employment of the professional;
- b. the reason for the selection of this particular professional. A copy of the resume of each professional who will provide services to the estate must accompany the application;
- c. the specific description of services to be rendered by the professional;
- d. the proposed arrangement for compensation of the professional; and
- e. whether the professional has any connection with the debtor, debtor-in-possession, creditors of the estate, or any other party in interest.

I emphasize that specificity of description is necessary.

2. **Fee and Expense Schedule.** An exhibit to the application shall set forth:

- a. the rates of compensation charged by the professional;
- b. to the extent that the professional has established a rate of reimbursement for expenses, these rates shall also be disclosed.

Approval of the employment of the professional does not mean I approve the rates of compensation or reimbursement disclosed in the application. If you seek advance approval of these rates, you must state so in the application and include appropriate language in your proposed order.

3. **Disclosure of Employment Agreement.** A true and correct copy of any written agreement concerning the terms of employment and/or compensation between the professional and the applicant shall be attached to the application. If any oral or written modification of this agreement is made, it must be disclosed by the professional to the court and the United States Trustee. If you believe the employment agreement contains privileged material, you may by separate motion request an order allowing an in camera inspection of the agreement by the court.

4. **Disclosure of Source of Payments.** The applicant must disclose the identity of the source of payments to the professional, whether it be the debtor, the estate, or a third party.

5. **Disclosure of Retainer.** If the professional has received or is seeking to obtain a retainer or an advance fee payment, the applicant must disclose in the application the nature of the retainer or advance fee payment, e.g. an "earned upon receipt" retainer. You are referred to *In re Hathaway Ranch Partnership*, 116 B.R. 208 (Bkrtcy. C.D. Cal. 1990).

If you seek approval of an earned upon receipt retainer, you must provide evidence and argument sufficient to persuade the court that such approval is warranted.

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If you have received an advance fee payment that must be maintained in a segregated trust account and you wish to draw upon that trust fund more frequently than every 120 days, you must request that relief in your employment application, support that request with evidence establishing that it is necessary and appropriate, and include pertinent language in your proposed order. Upon a proper showing, I will allow monthly draws on advance fee payments pursuant to Local Bankruptcy Rule 9013-1(g)(1)(N) with ten days notice.

If you seek to use the "Professional Fee Statement" procedure described in U.S. Trustee's Guides, you must meet the standards set forth in *In re Knudsen Corp.*, 84 B.R. 668 (9th Cir. BAP 1988).

The applicant must disclose whether the professional has received or will receive any lien or other interest in property of the debtor or of a third party to secure payment of the professional's fees.

6. **Conflicts of Interest.** The professional's declaration accompanying the application must expressly and specifically disclose:
 - a. Whether or not the applicant has a pre-petition claim against the estate and, if so, the amount of the claim;
 - b. Whether or not the professional has or had any connection with any insider of the debtor or any insider of an insider of the debtor; and
 - c. Whether or not the professional has represented, is representing, or intends to represent any related debtor in a bankruptcy case in this or any other court.
7. **Awareness of and Compliance With Applicable Law.** The professional must declare in the declaration accompanying the application that he, she, or it is familiar with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules and shall comply with them.
8. **Trustee Employing Own Firm.** If a trustee seeks approval of the employment of his own law firm or accounting firm, the applicant must demonstrate with argument, supported by admissible evidence, that there is cause under 11 U.S.C. § 327(d).
9. **Real Estate Brokers and Salespersons.** Before compensation can be paid to a real estate broker or salesperson, court approval must be obtained pursuant to 11 U.S.C. § 330 or § 331. Such approval may be obtained concurrently with approval of the broker's or salesperson's employment if: (1) the request is stated in the application and appropriate language is included in the proposed order; (2) the application is served upon any appointed committee, or if no committee has been appointed, upon all creditors with an interest in the subject property and the twenty largest unsecured creditors, exclusive of insiders as defined in 11 U.S.C. § 101(30); and it is demonstrated that the commission sought is reasonable.

Honorable VINCENT P. ZURZOLO
United States Bankruptcy Judge